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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

The following Report of the Joint Committee of the Houses on the Bill further to amend the Code of Civil Procedure, 1908, was presented to the Rajya Sabha on Wednesday, the 5th August, 1970:—

COMPOSITION OF THE JOINT COMMITTEE

RAJYA SABHA

1. Shri Syed Ahmed—*Chairman**
2. Shri Balachandra Menon
3. Dr. B. N. Antani
4. Shri Rattan Lal Jain
5. Shri B. N. Mandal
6. Shri Dalpat Singh†
7. Shri V. T. Nagpure
8. Shri Joachim Alva
9. Shri T. K. Patel
10. Shri P. C. Mitra
11. Shri T. V. Anandan‡
12. Shri Baharul Islam‡
13. Shri Pirthvi Nath‡
14. Shri Narinder Singh Brar†
15. Raja Shankar Pratap Singh‡

*Appointed Chairman on the 11th May, 1970 *vice* Pandit Sham Sunder Narain Tankha, retired on 2.4. 1970 from the membership of the Rajya Sabha.

†Appointed on the 25th March 1970 *vice* Shri R zaq Ram resigned from the membership of the Rajya Sabha

‡Appointed on 27th April, 1970 *vice* Pandit Sham Sunder Narain Tankha, Shri Jagat Narain, Shri Purnand Chetia, Shrimati Sneta Yudhvir and Shrimati Annapurna Devi Thimmareddy retired from the membership of the Rajya Sabha on the 2nd April, 1970.

Lok Sabha

16. Shri D. Balarama Raju
17. Shri Rajendranath Barua
18. Shri R. D. Bhandare
19. Shri Krishna Kumar Chatterji
20. Shri N. T. Das
21. Shri Shivajirao S. Deshmukh
22. Shri Shri Chand Goyal
23. Shri Ram Krishan Gupta
24. Shri Heerji Bhai
25. Shri J. M. Imam
26. Shri Kameshwar Singh
27. Shri Mushir Ahamad Khan
28. Shri Thandavan Kiruttinan
29. Shri K. Lakkappa
30. Shri Brij Bhushan Lal
31. Shrimati Sangam Laxmi Bai
32. Shri Mehendra Majhi
33. Shri B. P. Mandal
34. Shri M. Meghachandra
35. Shri Viswanatha Menon
36. Shri Bhaljibhai Ravjibhai Parmar
37. Shri S. B. Patil
38. Shri Jharkhande Rai
39. Chaudhuri Randhir Singh
40. Shrimati Savitri Shyam
41. Shri P. N. Solanki
42. Shri K. Subravelu
43. Pandit D. N. Tiwary
44. Shri Tenneti Viswanatham
45. Shri P. Govinda Menon*

MINISTRY OF LAW

Shri P. L. Gupta, Additional Legislative Counsel.
Shrimati V. S. Rama Devi, Dy. Legislative Counsel.

SECRETARIAT

Shri S. S. Bhalerao, Joint Secretary.
Shri S. P. Ganguly, Deputy Secretary.
Shri M. K. Jain, Under Secretary.

*Expired on 23-5-1970.

REPORT OF THE JOINT COMMITTEE

I, the Chairman of the Joint Committee to which the Bill* further to amend the Code of Civil Procedure, 1908, was referred, having been authorised to submit the Report on their behalf, present this their Report, with the Bill as amended by the Committee, annexed thereto.

2. The Bill was introduced in the Rajya Sabha on the 18th November, 1968. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri Mohammad Yunus Saleem, the then Dy. Minister in the Ministry of Law and in the Department of Social Welfare, on the 15th May, 1969 and was adopted by the House on the same day (Appendix I).

3. The Lok Sabha discussed and concurred in the motion on the 16th May, 1969 (Appendix II).

4. The message from the Lok Sabha was reported to the Rajya Sabha on the 16th May, 1969.

5. The Committee held 34 sittings in all. Of these 4 sittings were held at Calcutta from 15 to 19th January, 1970; 3 sittings at Bombay from 3rd to 5th February, 1970; and 3 sittings at Madras from 12th to 14th February, 1970 with the permission of the Chairman, Rajya Sabha.

6. At their first sitting held on the 17th May, 1969, the Committee decided that a Press Communique be issued inviting memoranda on the Bill from various associations, organisations and individuals interested in the subject matter of the Bill and advising them to send their memoranda so as to reach the Rajya Sabha Secretariat by the 30th June, 1969 The Committee further decided to call witnesses for giving oral evidence on the Bill and authorised the Chairman to decide, after examining all the memoranda, as to who might be invited for the purpose. The Chairman also agreed to consider such names, as might be suggested by the members, for giving oral evidence before the Committee.

7. Forty-three memoranda and other communications on the Bill were received by the Committee (Appendix III).

8. The Committee heard evidence tendered by twenty-nine witnesses (Appendix IV).

9. The Committee decided that the evidence tendered before them be laid on the Table of the House.

10. The Report of the Committee was to be presented to the House by the 30th August, 1969. The Committee were, however, granted extensions of time; first upto the last day of the Seventieth Session; then upto

*Published in Part II Section 2 of the Gazette of India Extraordinary dated the 18th November, 1968.

the last day of the Seventy-First Session; and then again upto the last day of the Seventy-third Session of the Rajya Sabha.

11. The Committee considered and adopted the Draft Report on the 25th July, 1970.

12. During the course of the evidence tendered before the Committee, various defects and lacunae in the Civil Procedure Code, 1908, were brought to the notice of the Committee. The Committee could not make any recommendations in respect thereof as these were outside the purview of the present Bill.

It is true that considerable time has elapsed since the enactment of the Civil Procedure Code, 1908 and the social structure as it existed then has undergone considerable change. The consensus in the Committee was that the present Bill touches only the fringe of he problems it professes to solve and has left out many matters which need attention. The Committee therefore recommend that the *raison d'etre* of the different provisions of the Code of Civil Procedure as a whole should be examined afresh by the Government with a view to bringing forward a comprehensive legislation for amending it.

13. The principal changes suggested by the Committee in the Bill and the reasons therefor are set out in the succeeding paragraphs:

CLAUSE 7

The Committee are of the view that filing of an affidavit or affirmation in connection with an application for transfer of a particular suit, appeal or other proceeding under the proposed section 25 of the Code of Civil Procedure should be made obligatory in all cases and that no relaxation need be made when application in this regard is made by the Attorney-General of India or the Advocate-General of a State.

Sub-section (2) of the proposed section 25 has accordingly been amended.

CLAUSE 17

The Committee are of the opinion that the period of three months specified in sub-section (1) of the proposed section 82 of the Code of Civil Procedure, after which the execution of the decree shall be ordered is quite adequate and there is no pustification for vesting discretionary power in the Court to extend the period further.

The proposed sub-section (3) has accordingly been deleted.

CLAUSE 23

(i) The Committee after carefully considering the views placed before them have come to the conclusion that the proviso to sub-section (1) of the proposed section 115 of the Code would have the effect or curtailing the revisionary jurisdiction of the High Court which having regard to the restricted scope of the said section, was not justifiable.

Proviso to sub-section (1) has accordingly been deleted.

(ii) The Committee also feel that the provisions contained in sub-sections (2) and (3) of the proposed section 115 are not necessary as these amount to unjustifiable interference with the exercise of the judicial discertion of the High Court and might in certain instances result in denial of justice.

Sub-sections (2) and (3) have accordingly been deleted.

CLAUSE 43

The Committee are of the opinion that the expenditure incurred not only on typing but also on writing and printing of the pleadings filed by any party, should be taken into account by the Court in awarding costs.

Necessary amendment has been made for the purpose.

The other changes made in the Bill are of a consequential or drafting nature. For convenience and also for reference purposes, an Annexure detailing the clauses in the Bill as introduced in the Rajya Sabha which have now been amended by the Joint Committee has been added.

14. The Committee recommend that the Bill as amended be passed.

SYED AHMED
Chairman of the Joint Committee.

NEW DELHI;
July, 25, 1970.

MINUTES OF DISSENT

I

संयुक्त प्रवर समिति के प्रयत्न के फलस्वरूप खंड न० 23 में अब सिर्फ दो उपखंड और एक व्याख्या रह गये हैं । मैं चाहता हूं कि दो उपखंडों को खतम कर दिया जाये और सी०पी०सी० की 115 धारा को पुराने रुप में रखा जाये और उस धारा के अंत में जो नयी व्याख्या संशोधन के रूप में आयी है, वह व्याख्या जोड़ दी जाये । ऐसा करने से बिना आकार बढ़ाये पूरे अर्थ का समावेश भी हो जायगा और अर्थ में स्पष्टता भी आयेगी ।

भूपेन्द्र नारायण मंडल

नई दिल्ली;

अगस्त, 1970

II

The Amending Bill to the Code of Civil Procedure seeks to amend the Code after a period of 60 years. The object of the Act was to make justice cheaper and speedier and also to delete or suitably amend other provisions of the Bill of 1908 which have become either out-moded or unfit to serve the present needs of the Society. However, the amending measure touches only the fringe of the problem and does not go far enough to make justice really speedier and cheaper. It is the bounden duty of a State to provide cheap and speedy justice to every citizen but it is a matter of common experience that many a citizen cannot approach the law courts on account of their meagre and limited resources even though they might have become victims of serious injustice at the hands of an individual, the society or the Government. The bill makes absolutely no provision for providing legal aid to the poor at the expense of the State. It is very much desirable that something must be done in that direction either by amending the Gode of Civil Procedure or by inserting provision like the provision of the filing of suits and appeals in *forma paupris*. The rates of court fees have been increasing from time to time and are fairly high at the moment. Something needs be done to reduce the rates of court fees especially on smaller amounts. A provision in the Code of Criminal Procedure enabling women to file maintenance application against the erring husbands on a small court fee of Rs. 1.25 is a very salutary provision and is responsible for securing cheaper justice to thousands of women is our country. Similar provisions need be incorporated in the Code of Civil Procedure.

It is a matter of common experience that justice delayed is in fact justice denied. The procedure in the present Code is responsible for delays in the disposal of civil suits and appeals. It is a matter of common knowledge that many a litigant has to engage lawyers several times during the pendency of an appeal in the High Court either on the ground

that a senior lawyer to whom the case had been entrusted is raised to the Bench or dies or shifts his place of business. The disposal of the case is also delayed, occasionally, because of the death of one of the parties impleaded in a suit or an appal because of the long period for which the case remains pending in the appellate court. The abatement proceeding resulting from the death of a party, notice of which is not given to the court, in the limited period provided in the Code also results in great hardships to the litigant community. Time has come when something must be done either to extend the period of abatement or for bringing the facts of death to the notice of the court or by deleting the provisions of abatement altogether. The question of avoiding delays is also intimately connected with the question of the strength of the judges in the High Court where arrears of cases to be decided have mounted to thousands with each High Court. Immediate steps are needed to raise the strength of the judiciary in each High Court and to fix a target that no case will take more than three years in a High Court or the Supreme Court.

The present measure has not achieved the twin objective of expedition and reduction of costs. Radical changes are needed to solve the twin objective. So far as the question of cutting down delays is concerned, the following measures are urgently needed:—

(i) The rival contentions between the parties must be clearly understood by the trial court in order to secure speedy disposal of the case. Pre-trial conference may also be provided for.

(ii) Personal appearance of the party must be dispensed with, excepting where it is directed by the trial court. The service of the Counsel ought to be sufficient for hearing appeals.

(iii) Furnishing of certified copies of judgements and decrees should not be a condition for preferring appeals.

(iv) Section 20 should be suitably amended to enable filing of suits in any court where any of the parties resides.

(v) No second appeal should be permitted in execution cases.

(vi) In order 21, amendment is required to provide that payment ought to be made only in court.

(vii) In order 23, rule 3, compromise should be permitted only in court and a suitable amendment is needed. The proceedings under order 21, rule 58 should be treated as a suit.

The old and outmoded concept of a pauper has to be drastically changed. The word pauper should be jettisoned and should be replaced by a person needing assistance. The provision of help not only in the matter of court fees, but in the matter of lawyer's fees and other expenses also should be provided for a person who has no capacity to pay. The assistance should depend on the merit of the cause and the need of the person. It has to be realised that provision for legal aid for a citizen is a pre-requisite in many countries. The scope of section 50 should therefore be enlarged considerably.

Other Changes Needed

1. The deletion of Section 80 from the Code is a welcome step. The applicability of Section 80 of the C.P.C. should also be removed from other statutes.

2. There are a number of outmoded provisions in this Code of Civil Procedure which do not fit in with the present structure of the society. Section 87B which deals with the special privileges of the Princes, has absolutely no place in the present context of the society and the sooner it is deleted, the better. At present different rules have been framed by various High Courts under Section 122 of the Act. It is desirable that a uniformity must be achieved in those rules.

3. Under Section 34 of the original Act, the rate of payment of interest to be raised is from 6 per cent to 12 per cent on unsecured amounts. So far as secured amounts are concerned, the rate of interest can be fixed in accordance with the amounts of instalments.

4. On the original side of the High Court, it is desirable that amendments be made in order 3, rule 4 of C.P.C. so as to provide for the filing of the power of Attorney along with the appearance, in order to avoid delay.

5. In the case of a corporation or a company, or a tribunal, for the purposes of Section 79, it is desirable that they should be described in their official capacity. Otherwise the change of a person, if he is described by name, creates complication and delay. The same can be followed in the matter of filing writ petition.

6. At present there is no provision in the C.P.C. wherein Interim orders can be passed in partnership cases, administration suits and in partition suit. Something has to be done about it.

7. In maintenance suits, widows would be entitled to interim orders of maintenance. The Madras High Court refused to pass interim order on the ground that there is no such provision in the maintenance suits, The provision is only under the Hindu Marriage Act. Such a provision can be made in Order 38, 39 and 40.

8. Provision should also be made in order 30, making it obligatory for the plaintiff to disclose the name of partners, assets of the partnership and the place of its headquarters.

SHRI CHAND GOYAL,
BRIJ BHUSHAN LAL
RATTAN LAL JAIN

NEW DELHI;

Bill No. XXXIVB of 1968

THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL, 1968

(AS REPORTED BY THE JOINT COMMITTEE)

(*Words underlined indicate the amendments suggested by the Committee, asterisks indicate omissions.*)

A

BILL

further to amend the Code of Civil Procedure, 1908.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1970.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Amendment of section 1.

5 of 1908.

2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), in section 1, in sub-section (*3*),—

(*i*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) save as hereinafter provided, the Scheduled Areas comprising the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh;";

(*ii*) for the proviso, the following provisos shall be substituted, namely:—

"Provided that sections 36 to 43 and Order XXXIV in the First Schedule shall extend also to the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh:

Provided further that in relation to the Union territory of Laccadive, Minicoy and Amindivi Islands, the application of the Code shall be without prejudice to the application of the Regulations, for the time being in force in such territory, relating to the application of this Code.".

Amendment of section 2.

3. In section 2 of the principal Act, in clause (17), in sub-clause (b), for the words "the Indian Civil Service", the words "an All-India Service" shall be substituted.

Amendment of section 8.

4. In section 8 of the principal Act, for the figures and words "77 and 155 to 158", the figures and word "77, 157 and 158" shall be substituted.

Insertion of new section 21 A.

5. In the principal Act, after section 21, the following section shall be inserted, namely:—

Bar of suit to set aside decree on objection as to place of suing.

'21A. No party to a suit shall be allowed to question the validity of a decree passed in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question, whether or not it was instituted prior thereto.'.

Amendment of section 24.

6. In section 24 of the principal Act, in sub-section (*2*), for the words "thereafter tries such suit", the words "is thereafter to try or dispose of such suit or proceeding" shall be substituted.

Substitution of new section for section 25.

7. For section 25 of the principal Act, the following section shall be substituted, namely:—

Power of Supreme Court to transfer suits, etc.

"25. (*1*) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any particular suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by motion which shall ***** be supported by affidavit or affirmation.

(3) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either re-try it or proceed from the stage at which it was transferred.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding two thousand rupees as it may consider appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.".

Amendment of section 35A.

8. In section 35A of the principal Act,—

(*a*) in sub-section (*1*), for the words "excluding an appeal", the words "excluding an appeal or a revision" shall be substituted;

(*b*) in sub-section (*2*), for the words "one thousand rupees", the words "two thousand rupees" shall be substituted.

Substitution of new section for section 36.

9. For section 36 of the principal Act, the following section shall be substituted, namely:—

Application to orders

"36. The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).".

Amendment of section 37.

10. In section 37 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

"Explanation.—The Court of first instance does not cease to have jurisdiction to execute a decree on the ground merely that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.".

Amendment of section 39.

11. In section 39 of the principal Act,—

(*a*) in sub-section (*1*), after the words "to another Court", the words "of competent jurisdiction" shall be inserted;

(*b*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.".

Amendment of section 42.

12. Section 42 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) Without prejudice to the generality of the provisions of sub-section (*1*), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(*a*) power to send the decree for execution to another Court under section 39;

(*b*) power to execute the decree against legal representative of the deceased judgment-debtor under section 50;

(*c*) power to order attachment of a decree.

(*3*) A Court passing an order in exercise of the powers specified in sub-section (*2*) shall send a copy thereof to the Court which passed the decree.

(*4*) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:—

(*a*) power to order execution at the instance of the transferee of a decree;

(*b*) in the case of a decree passed against a firm, power to grant the leave to execute such decree against any person other than such a person as is referred to in clause (*b*) or clause (*c*) of sub-rule (*1*) of rule 50 of Order XXI.".

Amendment of section 47.

13. In section 47 of the principal Act,—

(*a*) after sub-section (*3*), the following sub-section shall be inserted, namely:—

"(*4*) The provisions of section 11 shall, so far as may be, apply in relation to proceedings under this section as they apply to suits.";

(*b*) for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation 1.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation 2.—(*a*) For the purposes of this section, a purchaser of any property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(*b*) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.".

Amendment of section 58.

14. In section 58 of the principal Act, in sub-section (*1*), in clause (*a*), for the words "fifty rupees", the words "two hundred rupees" shall be substituted.

Amendment of section 60.

15. In section 60 of the principal Act, in sub-section (*1*),—

(*a*) in the proviso,—

(*i*) in clause (*g*), after the words "pensioners of the Government", the words "or of a local authority or of any other employer" shall be inserted;

(*ii*) in clause (*i*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that where the entire portion of such salary or any part of such portion which is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.";

(*iii*) for clause (*j*), the following clause shall be substituted, namely:—

45 of 1950. 46 of 1950. 62 of 1957.

"(*j*) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;";

(*b*) for *Explanation 1*, the following *Explanation* shall be substituted, namely:—

"*Explanation* 1.—The particulars mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*l*) and (*o*) are exempt from attachment or sale whether before or after they are payable, and in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.";

(*c*) in *Explanation 2*, for the words, brackets and letters "clauses (*h*) and (*i*)", the words, brackets and letters "clauses (*i*) and (*ia*)" shall be substituted.

Omission of section 80.

16. Section 80 of the principal Act, shall be omitted.

Substitution of new section for section 82.

17. For section 82 of the principal Act, the following section shall be substituted, namely:—

Execution of decree against Government or public officer.

"82. (*1*) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be, the public officer, execution shall not be issued on the decree unless it remains unsatisfied for a period of three months computed from the date of the decree.

(2) The provisions of sub-section (1) shall apply in relation to an order or award as they apply in relation to a decree, if the order or award—

(a) is passed or made against the Union of India or a State or a public officer in respect of any such act as aforesaid, whether by a Court or by any other authority; and

(b) is capable of being executed under the provisions of this Code or of any other law for the time being in force as if it were a decree.".

* * * * *

Amendment of section 95.

18. In section 95 of the principal Act, in sub-section (1), for the words "expense or injury caused to him", the words and brackets "expense or injury (including injury to reputation) caused to him" shall be substituted.

Amendment of section 97.

19. In section 97 of the principal Act, the words "passed after the commencement of this Code" shall be omitted.

Amendment of section 98.

20. In section 98 of the principal Act, in sub-section (2), in the proviso,—

(a) for the words "composed of two Judges belonging to a Court consisting of more than two Judges", the words "composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench" shall be substituted;

(b) for the words "differ in opinion on a point of law, they may state the point of law", the words "differ in opinion on a point, they may state the point" shall be substituted.

Amendment of section 102.

21. In section 102 of the principal Act, for the words "one thousand rupees", the words "three thousand rupees" shall be substituted.

Amendment of section 105.

22. In section 105 of the principal Act, in sub-section (2), the words "made after the commencement of this Code" shall be omitted.

Substitution of new section for section 115.

23. For section 115 of the principal Act, the following section shall be substituted, namely:—

Revision.

'115. (1) The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

* * * * *

Explanation.—In this sub-section, the expression "any case which has been decided includes any order made in the course of a suit or other proceeding, including an order deciding an issue.

* * * * *

(*2*) The High Court shall not, under sub-section (*1*), vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.'.

Amendment of section 135A.

24. In section 135A of the principal Act, in sub-section (*1*), for the word "fourteen", the word "forty" shall be substituted.

Amendment of section 144.

25. In section 144 of the principal Act, for sub-section (*1*), the following sub-section and *Explanation* shall be substituted, namely:—

(*1*) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation.—For the purposes of this section, the expression "Court which passed the decree or order" shall be deemed to include,—

(*a*) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(*b*) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order; and

(*c*) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed was instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.'.

Amendment of section 145.

26. In section 145 of the principal Act,—

(*a*) for the words "has become liable as surety", the words "has furnished security" shall be substituted;

(*b*) for the portion beginning with the words "the decree or order may be executed against him" and ending with the words and figures "within the meaning of section 47:", the following shall be substituted, namely:—

"the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

(*i*) if he has rendered himself personally liable, against him to that extent; and

(*ii*) if he has furnished any property as security, by sale of such property to the extent of the security;

(*iii*) if the case falls both under clauses (*i*) and (*ii*), then to the extent specified in those clauses,

and such person shall, for the purposes of appeal, be deemed to be a party within the meaning of section 47:".

Amendment of Order I of First Schedule.

27. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order I,—

(*a*) for rule 1, the following rule shall be substituted namely:—

Who may be joined as plaintiffs.

"1. All persons may be joined in one suit as plaintiffs where—

(*a*) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(*b*) if such persons brought separate suits, any common question of law or fact would arise.";

(*b*) for rule 3, the following rule shall be substituted, namely:—

Who may be joined as defendants.

"3. All persons may be joined in one suit as defendants where—

(*a*) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(*b*) if separate suits were brought against such persons, any common question of law or fact would arise.";

(c) after rule 3, the following rule shall be inserted, namely:—

Power to order separate trials where joinder of defendants may embarrass or delay trial.

"3A. Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient.";

(d) for rule 8, the following rule shall be substituted, namely:—

One person may sue or defend on behalf of all in same interest.

"8. (1) Where there are numerous persons having the same interest in one suit,—

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend any such suit, on behalf of or for the benefit of all persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend any such suit, on behalf of or for the benefit of all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service or, where by reason of the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

(4) No such suit shall be withdrawn and no part of the claim in any such suit abandoned under sub-rule (1) or sub-rule (2) of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf or for whose benefit the suit is instituted, or defended, as the case may be; but such decree shall not be executed by or against any person who is not a party on record to the suit except with the leave of the Court.

(7) Notice of an application for the grant of leave under sub-rule (6) shall be served on the person against whom a decree is sought to be executed in the manner provided in this Code for the service of a summons.

(8) Any person, who is served with the notice referred to in sub-rule (7), may dispute liability to have the decree executed against him on the ground that by reason of facts and matters particular to his case, he is entitled to be exempted from such liability.";

(*e*) in rule 10,—

(*i*) for sub-rule (2), the following sub-rule shall be substituted, namely:—

Court may strike out or add parties.

"(2) The Court may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just,—

(*a*) order that the name of any person who has been improperly or unnecessarily joined, whether as plaintiff or defendant, or who has, for any reason, ceased to be a proper or necessary party, be struck out;

(*b*) order that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.";

(*ii*) in sub-rule (5), for the words and figures "the Indian Limitation Act, 1877, section 22,", the words and figures "section 21 of the Limitation Act, 1963," shall be substituted; 15 of 1877. 36 of 1963.

(*f*) in rule 11, for the words "the suit", the words "a suit" shall be substituted.

Amendment of Order II.

28. In the First Schedule, in Order II, for rule 6, the following rule shall be substituted, namely:—

Power of Court to order separate trials.

"6. Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.".

Amendment of Order III.

29. In the First Schedule, in Order III,—

(*a*) in rule 4, for sub-rule (3), the following sub-rule shall be substituted, namely:—

"(3) For the purposes of sub-rule (2),—

(*a*) an application for review of judgment,

(*b*) an application under section 144 or section 152 of this Code,

(*c*) any appeal or application for revision from any decree or order in the suit and any application relating to such appeal or revision, and

(*d*) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit,

shall be deemed to be proceedings in the suit.";

(*b*) in rule 5, for the words "Any process served on the pleader of any party", the words "Any process served on the pleader who has been duly appointed to act in Court for any party" shall be substituted;

(*c*) in rule 6, after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) The Court may, at any stage of a suit, order any party to the suit not having—

(*a*) a recognised agent residing within the jurisdiction of the Court, or

(*b*) a pleader who has been duly appointed to act in Court on his behalf,

to appoint within a specified time an agent within the jurisdiction of the Court to accept service of process on his behalf.".

30. In the First Schedule, in Order V,— **Amendment of Order V.**

(*a*) in rule 1, in sub-rule (*1*), after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that in appropriate cases the Court may direct the defendant to file the written statement, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.";

(*b*) in rule 15, for the words "the defendant cannot be found and" the words "the defendant is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he" shall be substituted;

(*c*) in rule 17, for the words "or where the serving officer, after using all due and reasonable diligence, cannot find the defendant", the words "or where the defendant is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time" shall be substituted;

(d) after rule 19, the following rule shall be inserted, namely:—

Simultaneous issue of summons for service by post in addition to personal service.

"19A. (*1*) The Court shall, in addition to and simultaneously with the issue of summons for service in the manner provided in rules 9 to 18 also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent ordinarily resides or carries on business or personally works for gain:

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(*2*) When an acknowledgement purporting to be signed by the defendant or the agent or an endorsement purporting to be made by a postal employee that the defendant or the agent refused to take delivery has been received, the Court issuing the summons may declare that there has been valid service.";

(*e*) in rule 20, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the Court acting under sub-rule (*1*), orders service by advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have resided, carried on business or personally worked for gain.";

(*f*) rule 20A shall be omitted;

(*g*) for rule 26, the following rules shall be substituted, namely:—

Service in foreign territory through Political Agents or Court.

"26. Where—

(*a*) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or

(*b*) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs or in such other manner as may be specified by the Central Government, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Summonses to be sent to officers of foreign countries.

26A. Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants residing in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement signed by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.".

Amendment of Order VI.

31. In the First Schedule, in Order VI,—

(*a*) for rule 2, the following rule shall be substituted, namely:—

Pleading to state material facts and not evidence.

"2. (*1*) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(*2*) Every pleading shall, when necessary, be divided into paragraphs numbered consecutively each allegation being, so far as is convenient, contained in a separate paragraph.

(*3*) Dates, sums and numbers shall be expressed in a pleading in figures.";

(*b*) after rule 14, the following rule shall be inserted, namely:—

Address for service of notice.

'14A. (*1*) Every pleading when filed by a party shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the party's address for service.

(*2*) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(*3*) The address furnished in the statement made under sub-rule (*1*), shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(*4*) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(*5*) Where the registered address of a party is discovered by the Court to be false, fictitious or illusory, the Court may, either on its own motion, or on the application of any party, order—

(a) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(b) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if for any reason, it thinks fit to do so.';

(c) for rule 16, the following rule shall be substituted, namely:—

Striking out pleadings.

"16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.";

(d) rule 17 shall be re-numbered as sub-rule (1) of that rule, and after sub-rule (1) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(2) For the removal of doubts it is hereby declared that the power conferred on the Court to allow either party to alter or amend his pleadings may be exercised by the Court notwithstanding that after such alteration or amendment the Court may not be competent to try the suit; and where as a result of any amendment or alteration the Court is not competent to try the suit it shall return the plaint for presentation to the proper Court.".

Amendment of Order VII.

32. In the First Schedule, in Order VII, in rule 9,—

(a) in sub-rule (1), for the words "shall present as many copies on plain paper of the plaint", the words "shall, within such time as may be fixed by the Court or extended by it from time to time, present as many copies on plain paper of the plaint" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The plaintiff shall, within the time fixed by the Court or extended by it under sub-rule (*1*), pay the requisite fee for the service of summons on the defendants.".

Amendment of Order VIII.

33. In the First Schedule, in Order VIII—

(*a*) for the heading "WRITTEN STATEMENT AND SET-OFF", the heading "WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM" shall be substituted;

(*b*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where the defendant relies on any document (whether in his possession or power or not) in support of his defence or claim for set-off or counter-claim, he shall enter such documents in a list, and shall, -

(*a*) if a written statement is presented, add or annex the list to the written statement;

(*b*) if a written statement is not presented, present it to Court at the first hearing of the suit:

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement.

(*3*) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(*4*) If no such list is so added or annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

(*5*) A document which ought to be entered in the list referred to in sub-rule (*2*), and which is not entered accordingly, shall not, without the leave of the Court, be received as evidence on behalf of the defendant at the hearing of the suit.

(*6*) Nothing in sub-rule (*5*) shall apply to documents produced for cross-examination of the plaintiff's witnesses or furnished to a witness merely to refresh his memory.

(*7*) Where a Court grants leave under sub-rule (*5*), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (*2*).";

(c) after rule 6, the following rules shall be inserted, namely:—

Counter-claim by defendant.

"6A. (1) A defendant in a suit, in addition to his right of pleading a set-off under rule 6, may set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence and before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(2) Such counter-claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Counter-claim to be stated.

6B. Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Exclusion of counter-claim.

6C. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application, make such order as it may deem fit.

Discontinuance of suit.

6D. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Default by defendant to counter-claim.

6E. If the defendant to the counter-claim makes default in putting in a reply to the counter-claim, the Court may pronounce judgment against him or make such order in relation to the counter-claim as it thinks fit.

Relief to defendant in counter-claim.

6F. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

Rules relating to written statement to apply.

6G. The rules relating to a written statement by a defendant shall apply to a written statement in answer to a counter-claim.";

(d) in rule 7, after the word "set-off", the words "or counter-claim" shall be inserted;

(*e*) in rule 8, after the word "set-off", the words "or counter-claim" shall be inserted;

(*f*) in rule 9, after the word "set-off", the words "or counter-claim" shall be inserted;

(*g*) in rule 10, for the words "is so required fails to present the same within the time fixed by the Court", the words and figures "is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be," shall be substituted.

Amendment of Order IX.

34. In the First Schedule, in Order IX,—

(*a*) in rule 2—

(*i*) after the words and brackets "or postal charges (if any) chargeable for such service,", the words and figures "or to present copies of the plaint or concise statements, as required by rule 9 of Order VII," shall be inserted;

(*ii*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that no such order shall be made if, notwithstanding such failure, the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.";

(*b*) in rule 4, for the words and brackets "his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons", the words and figure "such failure as is referred to in rule 2" shall be substituted;

(*c*) in rule 5, for the words "three months", the words "two months" shall be substituted;

(*d*) in rule 13, after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.".

Amendment of Order X.

35. In the First Schedule, in Order X, for rule 2, the following rule shall be substituted, namely:—

Oral examination of Party, or companion of party.

"2. (*1*) At the first hearing of the suit, the Court—

(*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(*b*) may orally examine any person able to answer any material question relating to the suit by whom any party appearing in person or present in Court or his pleader is accompanied.

(2) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied.

(3) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.".

Amendment of Order XI.

36. In the First Schedule, in Order XI,—

(*a*) in rule 6, for the words "or on any other ground", the words "or on the ground of privilege or any other ground" shall be substituted;

(*b*) in rule 15, after words "in whose pleadings or affidavits reference is made to any document,", the words "or who has entered any document in any list added or annexed to his pleadings," shall be inserted;

(*c*) in rule 19, in sub-rule (2), the words "unless the document relates to matters of State" shall be inserted at the end.

Amendment of Order XIII.

37. In the First Schedule, in Order XIII,—

(*a*) rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(2) Nothing in sub-rule (1) shall apply to documents,—

(*a*) produced for cross-examination of the witnesses of the other party, or

(*b*) furnished to a witness merely to refresh his memory.";

(*b*) in rule 9, in sub-rule (*1*), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(*a*) delivers to the proper officer for being substituted for the original—

(*i*) in the case of a party to the suit, a certified copy, and

(*ii*) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (2) of rule 17 of Order VII, and

(*b*) undertakes to produce the original if required to do so:".

Amendment of Order XIV.

38. In the First Schedule, in Order XIV, in rule 1, in sub-rule (5), for the words "after such examination of the parties as may appear necessary", the words and figures "after examination under rule 2 of Order X and after hearing the parties or their pleaders" shall be substituted.

39. In the First Schedule, in Order XVI,— Amendment of Order XVI.

(*a*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) On or before such date as the Court may appoint and not later than ten days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents. List of witnesses and summons to witnesses.

(*2*) A party desirous of calling, whether by summoning through Court or otherwise, any witness other than those whose names appear in the said list, may be permitted to do so by the Court, if he shows good cause for the omission of the said witness from the list.

(*3*) Where the Court grants any such permission, it shall record its reasons for so doing.

(*4*) On application to the Court or to such officer as it appoints in this behalf, and subject to the provisions of sub-rule (*2*), parties may obtain summonses to persons whose attendance is required either to give evidence or to produce documents.";

(*b*) for rule 1A, the following rule shall be substituted, namely:—

"1A. Subject to the provisions of sub-rule (*2*) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents."; Production of witnesses without summons through Court.

(c) in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where the summons is served on the witness by the party directly, the expenses mentioned in sub-rule (*1*) shall be paid to the witness by the party or his agent.";

(*d*) after rule 7, the following rule shall be inserted, namely:—

"7A. (*1*) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons by such party, and shall, in such a case, deliver the summons to such party for service. Summons given to party for service.

(*2*) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer as he appoints in this behalf and sealed with the seal of the Court.

(*3*) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule, as if the person effecting service were a serving-officer.

(*4*) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.";

(*e*) in rule 8, for the words "under this Order", the words, figure and letter "under this order, not being a summons delivered to a party for service under rule 7A," shall be substituted;

(*f*) in rule 10,—

(*i*) for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, and may, if the certificate of the serving-officer has been so verified, examine the serving-officer or the party or his agent who has effected service, as the case may be, on oath, or cause him to be so examined by any Court touching the service or non-service of the summons.";

(*ii*) after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Notwithstanding any thing contained in rule 1 of Order XLVIII, no court-fee shall be charged for the issue of any process under this rule unless the Court otherwise directs.";

(*g*) rule 12 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Notwithstanding that the Court has not issued a proclamation under sub-rule (*2*) of rule 10 nor issued a warrant nor ordered attachment under sub-rule (*3*) of that rule, the Court may impose fine under sub-rule (*1*) of this rule after giving notice to such person to show cause why the fine should not be imposed.".

Amendment of Order XVII.

40. In the First Schedule, in Order XVII,—

(*a*) in rule 2, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.";

(*b*) in rule 3, for the words "the Court may, notwithstanding such default, proceed to decide the suit forthwith", the following shall be substituted, namely:—

"the Court may, notwithstanding such default,—

(*a*) if the parties are present, proceed to decide the suit forthwith;

(*b*) if the parties are or any of them is absent, proceed under rule 2.".

Amendment of Order XVIII.

41. In the First Schedule, in Order XVIII, in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.".

Amendment of Order XX.

42. In the First Schedule, in Order XX,—

(*a*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out, and it shall not be necessary for the Court to read out the whole judgment; but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.";

(*b*) after rule 12, the following rule shall be inserted, namely:—

Decree for specific performance of contract for the sale or lease of immovable property.

"12A. Where a decree for specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.";

(*c*) in rule 19, in sub-rules (*1*) and (*2*), after the word "set-off", wherever it occurs, the words "or counter-claim" shall be inserted.

Insertion of new Order XXA.

43. In the First Schedule, after Order XX, the following Order shall be inserted, namely:—

"ORDER XXA

COSTS

Provisions relating to certain items.

1. (*1*) Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of—

(*a*) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(*b*) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(*c*) expenditure incurred on the typing, writing and printing of pleadings filed by any party;

(*d*) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(*e*) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(*f*) in the cases of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

(*2*) The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.

Pleader's fees.

2. In calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader, or a certificate in writing signed by him and stating the amount received, has been filed in Court.".

Amendment of Order XXI.

44. In the First Schedule, in Order **XXI**,—

(*a*) for rule 1, the following rule shall be substituted, namely:—

Modes of paying money under decree.

"1. (*1*) All money payable under a decree shall be paid as follows, namely:—

(*a*) by deposit into or by postal money order sent to the Court whose duty it is to execute the decree, or through a bank to that Court;

(*b*) out of Court to the decree-holder through a bank or by postal money order or by any other mode wherein payment is evidenced in writing; or

(*c*) otherwise, as the Court which made the decree, directs.

(*2*) Where any payment is made under clause (*a*) or clause (*c*) of sub-rule (*1*), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or by registered post direct.

(*3*) Where money is paid by postal money order under clause (*a*) or clause (*b*) of sub-rule (*1*), the money order shall accurately state the following particulars, namely:—

(*i*) the number of the original suit;

(*ii*) the names of the parties or where there are more plaintiffs than two or more defendants than two, the names of the first two plaintiffs or, as the case may be, the first two defendants;

(*iii*) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(*iv*) the number of the execution case of the Court, where such case is pending; and

(*v*) the name and address of the payer.

(*4*) On any amount paid under clause (*a*) or clause (*c*) of sub-rule (*1*), interest, if any, shall cease to run from the date of service of the notice under sub-rule (*2*).";

(*b*) in rule 2,—

(*i*) in sub-rule (*1*), for the words "or the decree is otherwise adjusted", the words "or a decree of any kind is otherwise adjusted" shall be substituted;

(*ii*) after sub-rule (2), the following sub-rule shall be inserted, namely:—

"(*2A*) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

(*a*) the payment is made in the manner provided in rule 1; or

(*b*) the adjustment is proved by documentary evidence; or

(*c*) the payment or adjustment is admitted by or on behalf of the decree-holder in his reply to the notice or before the Court.";

(*c*) after rule 11, the following rule shall be inserted, namely:—

"11A. Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.";

Application for arrest to state grounds.

(*d*) in rule 17,—

(*i*) in sub-rule (*1*), for the words "the Court may reject the application, or may allow", the words "the Court shall allow" shall be substituted;

(*ii*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) If the defect is not so remedied, the Court shall reject the application:

Provided that where in the opinion of the Court there is some inaccuracy as to the amount referred to in clauses (*g*) and (*h*) of sub-rule (*2*) of rule 11, the Court shall, instead of rejecting the application, provisionally decide (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the accurate amount and make an order for the execution of the decree for the amount so provisionally decided.";

(*e*) in rule 22, in sub-rule (*1*),—

(*i*) for the words "one year", wherever they occur, the words "two years" shall be substituted;

(*ii*) in clause (*b*), the word "or" shall be inserted at the end;

(*iii*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent:";

(*f*) in rule 29, after the words "a decree of such Court", the words "or of a decree which is being executed by such Court" shall be inserted;

(*g*) in rule 31, in sub-rules (*2*) and (*3*), for the words "six months", the words "three months" shall be substituted;

(*h*) in rule 32, in sub-rules (*3*) and (*4*), for the words "one year", the words "six months" shall be substituted;

(*i*) rule 41 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, in clause (*b*), for the words "in the case of a corporation", the words "where the judgment-debtor is a corporation" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (*1*), by order require the judgment-debtor or where the judgment-debtor is a corporation any officer thereof, to make an affidavit stating particulars of the assets of the judgment-debtor.";

(*j*) after rule 43, the following rule shall be inserted, namely:—

Custody of movable property.

"43A. (*1*) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the custodian).

(*2*) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(*a*) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who

is found to be entitled to restoration thereof, for any loss or damage caused by his fault; and

(*b*) such liability may be enforced—

(*i*) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(*ii*) at the instance of the judgment-debtor or such other person, on an application in execution; and

(*c*) any order determining such liability shall be appealable as a decree.";

(*k*) after rule 46, the following rules shall be inserted, namely:—

Notice to garnishee.

"46A. (*1*) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching-creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(*2*) An application under sub-rule (*1*) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor.

(*3*) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree holder towards satisfaction of the decree and costs of the execution.

Order against garnishee.

46B. Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice, and on such order execution may issue as though such order were a decree against him.

Trial of disputed questions.

46C. Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it may deem fit:

Provided that, if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Procedure where debt belongs to third person.

46D. Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Order as regards third person.

46E. After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Payment by garnishee to be valid discharge.

46F. Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

Costs.

46G. The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

Appeals

46H. An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

Application to negotiable instruments.

46I. The provisions of rules 46A to 46H shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.";

(*l*) in rule 48,—

(*i*) in sub-rule (*1*), after the words "local authority", the words and figures "or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956" shall be inserted; 1 of 1956.

(*ii*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the

railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.";

(*iii*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this rule, "appropriate Government" means—

(*i*) as respects any person in the service of the Central Government, or any servant of a railway administration or of a cantonment authority or of the port authority of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government;

(*ii*) as respects any other servant of the Government, or a servant of any other local authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.';

(*m*) after rule 48, the following rule shall be inserted, namely:

Attachment of salary or allowances of private employees.

"48A. (*1*) Where the property to be attached is the salary or allowances of a servant other than a servant to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(*2*) Where the attachable proportion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if

he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.";

(*n*) in rule 50,—

(*i*) in the proviso to sub-rule (*1*), for the words and figures "section 247 of the Indian Contract Act, 1872", the words and figures "section 30 of the Indian Partnership Act, 1932" shall be substituted; 9 of 1872. 9 of 1932.

(*ii*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(5) Nothing in this rule applies to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX.";

(*o*) in rule 53,—

(*i*) in sub-rule (*1*), for paragraph (*ii*) of clause (*b*), the following paragraph shall be substituted, namely:—

"(*ii*) (*a*) the holder of the decree sought to be executed, or

(*b*) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.";

(*ii*) in sub-rule (*6*), after the words "in contravention of such order", the words "with knowledge thereof or" shall be inserted;

(*p*) in rule 54,—

(*i*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.";

(*ii*) in sub-rule (*2*), after the words "in the office of the Collector of the district in which the land is situate", the following shall be inserted, namely:—

"and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.";

(q) for the sub-heading "*Investigation of claims and objections*" and rules 58 to 63, the following shall be substituted, namely:—

"*Adjudication of claims and objections*

Adjudication of claims to, or objections to attachment of, attached property.

58. (*1*) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(*a*) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(*b*) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(*2*) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding under this rule or their representatives and relevant to the adjudication of the claim or objection shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(*3*) Upon the determination of the questions referred to in sub-rule (*2*), the Court shall in accordance with such determination—

(*a*) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(*b*) disallow the claim or objection; or

(*c*) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(*d*) pass such order as in the circumstances of the case it deems fit.

(*4*) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(*5*) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (*1*), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Stay of sale.

59. Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(*a*) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(*b*) if the property is immovable, make an order that pending the adjudication of the claim or objection the property shall not be sold or that pending such adjudication the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.";

(*r*) in rule 66, in sub-rule (*2*), the following provisos shall be inserted at the end, namely:—

"Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that it shall not be necessary for the Court to give its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given by either or both of the parties.";

(*s*) in rule 68,—

(*i*) for the words "thirty days", the words "fifteen days" shall be substituted;

(*ii*) for the words "fifteen days", the words "seven days" shall be substituted;

(*t*) in rule 69, in sub-rule (*2*), for the word "seven", the word "thirty" shall be substituted;

(*u*) in rule 89, in sub-rule (*1*), for the words "any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale,", the words "any person claiming any interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person," shall be substituted;

(*v*) for rule 90, the following rule shall be substituted, namely:—

Application to set aside sale on ground of irregularity or fraud.

"90. (*1*) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(*2*) No sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(*3*) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.";

(*w*) in rule 92,—

(*i*) in sub-rule (*1*), for the words "the Court shall", the words and figures "the Court shall, subject to the provisions of rule 59," shall be substituted;

(*ii*) in sub-rule (*2*), for the words "the Court shall make an order setting aside the sale", the following shall be substituted, namely:—

"or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale";

(*x*) in rule 97, for sub-rule (*2*), the following sub-rule shall be substituted, namely:—

"(*2*) Where any application is made under sub-rule (*1*), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.";

(*y*) for rules 98 to 103, the following rules shall be substituted, namely:—

Orders after adjudication.

"98. (*1*) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (*2*),—

(*a*) allow the application and direct that the applicant be put into possession of the property; or

(*b*) dismiss the application; or

(*c*) pass such order as in the circumstances of the case it deems fit.

(*2*) Where upon such determination the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, it shall direct that the applicant be put into possession of the property and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Dispossession by decree-holder or purchaser.

99. (*1*) Where any person other than the judgment-debtor is dispossed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(*2*) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order to be passed upon application complaining of dispossession.

100. Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(*a*) allow the application and direct that the applicant be put back into possession of the property; or

(*b*) dismiss the application; or

(*c*) pass such order as in the circumstances of the case it deems fit.

Questions to be determined.

101. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit.

Rules not applicable to transferee *lite pendente.*

102. Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Orders to be treated as decrees.

103. Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.";

(*z*) after rule 103, the following rules shall be inserted, namely:—

Hearing of application.

"104. (*1*) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(*2*) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(*3*) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (*1*) includes a claim or objection made under rule 58.

Setting aside orders passed *ex parte,* etc.

105. (*1*) The applicant against whom an order is made under sub-rule (*2*) of rule 104 or the opposite party against whom an order is passed *ex parte* under sub-rule (*3*) of that rule or under sub-rule (*1*) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(*2*) No order shall be made on an application under sub-rule (*1*) unless notice of the application has been served on the other party.

(*3*) An application under sub-rule (*1*) shall be made within thirty days of the date of the order, or where in the case of an *ex parte* order the notice was not duly served, the date when the applicant had knowledge of the order.".

Amendment of Order XXII.

45. In the First Schedule, in Order XXII, in rule 5, the following proviso shall be inserted at the end, namely:—

"Provided that, where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with the evidence, if any, recorded at such trial, its finding and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.".

Amendment of Order XXIII.

46. In the First Schedule, in Order XXIII,—

(*a*) in rule 1,—

(*i*) in sub-rule (*1*), the following proviso shall be inserted at the end, namely:—

"Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, the suit shall not be withdrawn nor shall any part of the claim be abandoned without the leave of the Court.";

(*ii*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

(*1A*) An application for leave under the proviso to sub-rule (*1*) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the withdrawal proposed is, in his opinion, for the benefit of the minor or such other person.";

(*b*) in rule 3,—

(*i*) after the words "lawful agreement or compromise", the words "in writing and signed by the parties" shall be inserted;

(*ii*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule.".

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Amendment of Order XXVI.

47. In the First Schedule, in Order XXVI,—

(*a*) in rule 7, for the words "subject to the provisions of the next following rule", the words and figure "subject to the provisions of rule 8" shall be substituted;

(*b*) after rule 16, the following rule shall be inserted, namely:—

Questions objected to before the Commissioner.

"16A. (*1*) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objection and the name of the party or, as the case may be, the pleader so objecting.

(*2*) No answer taken down under sub-rule (*1*) shall be read as evidence in the suit except by the order of the Court.";

(c) after rule 18, the following rule shall be inserted, namely:—

Application of Order to execution proceedings.

"18A. The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.";

(*d*) in rule 22, after the figures "16", the words, brackets, figures and letter "sub-rule (*1*) of rule 16A" shall be inserted.

Amendment of Order XXX.

48. In the First Schedule, in Order XXX,—

(*a*) for rule 8, the following rule shall be substituted, namely:—

Appearance under protest.

"8. (*1*) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(*2*) On such appearance being made either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(*3*) If on such application the Court holds that he was a partner at the material time, that shall not preclude that person from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(*4*) If the Court however holds that such person was not a partner of the firm and was not liable as such, that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.";

(*b*) for rule 10, the following rule shall be substituted, namely:—

Suit against person carrying on business in name other than his own.

"10. Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply.".

Amendment of Order XXXII.

49. In the First Schedule, in Order XXXII,—

(*a*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this Order, the expression "minor" means

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a person who has not attained his majority within the meaning of sections 3 and 4 of the Indian Majority Act, 1875, where the suit relates to any of the matters mentioned in clauses (*a*) and (*b*) of section 2 of that Act or to any other matter.';

(*b*) after rule 2, the following rule shall be inserted, namely:—

Security to be furnished by next friend when so ordered.

"2A. (*1*) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant.

(*2*) Where such a suit is instituted in *forma pauperis*, the security shall include the court-fees payable to the Government.

(*3*) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.";

(*c*) in rule 3—

(*i*) in sub-rule (*4*), the words "to the minor and" shall be omitted;

(*ii*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*4A*) The Court may, in any case, if it thinks fit, issue notice under sub-rule (*4*) to the minor also.";

(*d*) in rule 4—

(*i*) in sub-rule (*3*), after the word "consent", the words "in writing" shall be inserted;

(*ii*) in sub-rule (*4*), after the words "any fund in Court in which the minor is interested", the words "or out of the property of the minor" shall be inserted;

(*e*) in rule 6, in sub-rule (*2*), the following proviso shall be inserted at the end, namely:—

"Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian—

(*a*) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(*b*) is the parent of the minor.";

(*f*) in rule 7, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) An application for leave under sub-rule (*1*) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to

the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor.";

(*g*) for rule 16, the following rule shall be substituted, namely:—

Savings regarding Rulers.

"16. (*1*) Nothing in this Order shall apply to the Ruler of a foreign State suing or being sued in the name of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

(*2*) Nothing in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.".

Amendment of Order XXXIII.

50. In the First Schedule, in Order XXXIII,—

(*a*) in rule 1, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

'*Explanation* 1.—A person is a "pauper"—

(*a*) when he is not possessed of sufficient means (other than his necessary wearing-apparel and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(*b*) where no such fee is prescribed, when he is not entitled to property worth one thousand rupees other than his necessary wearing-apparel and the subject-matter of the suit.

Explanation 2.—Any property which is acquired by a person after the presentation of his application for permission to sue as a pauper and before the decision of the application, shall be taken into account in considering the question whether he is a pauper.';

(*b*) in rule 11, in clause (*a*), after the words "such service", the words "or to present copies of the plaint or concise statement" shall be inserted;

(*c*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*i*) in sub-rule (*1*) as so re-numbered, the word "first" shall be omitted;

(*ii*) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where the applicant has not, before the institution of the suit, paid the costs referred to in sub-rule (*1*), the Court may, at its discretion, allow him such time as it thinks fit to pay such costs.";

(*d*) after rule 15, the following rule shall be inserted, namely:—

Grant of time for Payment of Court Fee.

"15A. Nothing in rule 5, 7 or 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in sub-rule (*1*)

of rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application was presented.";

(*e*) after rule 16, the following rule shall be inserted, namely:—

"17. Any defendant who desires to plead a set-off or counter-claim may be allowed to set up such claim as a pauper, and the rules in this Order shall, so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.". Defence by pauper.

51. In the First Schedule, in Order XXXIV,— Amendment of Order XXXIV.

(*a*) in rule 3, in sub-rule (*2*), after the words "on application made by the plaintiff in this behalf", the words "and after notice all parties" shall be inserted;

(*b*) in rule 5, in sub-rule (*3*), after the words "on application made by the plaintiff in this behalf", the words "and after notice to all parties" shall be inserted;

(*c*) in rule 8, in sub-rule (*3*), after the words "on application made by the defendant in this behalf", the words "and after notice to all parties" shall be inserted;

(*d*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.".

52. In the First Schedule, in Order XXXVIII,— Amendment of Order XXXVIII.

(*a*) for rule 8, the following rule shall be substituted, namely:—

"8. Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money."; Adjudication of claim to property attached before judgment.

(*b*) after rule 11, the following rule shall be inserted, namely:—

"11A. The provisions of this Code applicable to an attachment made in execution of a decree shall, as far as may be, apply to an attachment made before judgment which continues after judgment by virtue of the provisions of rule 11.". Provisions applicable to attachment.

53. In the First Schedule, in Order XXXIX,— Amendment of Order XXXIX.

(*a*) in rule 2, sub-rules (*3*) and (*4*) shall be omitted;

(*b*) after rule 2, the following rule shall be inserted, namely:—

Consequences of disobedience or breach of injunction.

"2A. (*1*) In case of disobedience to any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(*2*) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.";

(*c*) in rule 8,—

(*i*) in sub-rule (*1*), the words "after notice to the defendant" shall be omitted;

(*ii*) in sub-rule (*2*), the words "after notice to the plaintiff" shall be omitted;

(*iii*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.".

Amendment of Order XLI.

54. In the First Schedule, in Order XLI,—

(*a*) in rule 1,—

(*i*) in sub-rule (*1*), the following proviso shall be inserted at the end, namely:—

"Provided that where two or more cases have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.";

(*ii*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

Deposit of amount or furnishing of security in certain cases.

"(*3*) Where the appeal is against an order made in execution of a decree for payment of money, the appellant shall, within such time, as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security as the Court thinks fit in respect thereof.";

(*b*) in rule 3, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the appellant fails to make the deposit or furnish security as specified in sub-rule (*3*) of rule 1, the Court shall reject the memorandum.";

(*c*) after rule 3, the following rule shall be inserted, namely:—

Application for condonation of delay.

"3A. (*1*) When an appeal is presented after the period of limitation prescribed therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(*2*) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.";

(*d*) in rule 5,—

(*i*) in sub-rule (*1*), the words "but the Appellate Court may for sufficient cause order stay of execution of such decree" shall be omitted;

(*ii*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in sub-rule (*1*), the Appellate Court may, for sufficient cause, order.—

(*a*) in the case of any decree other than a preliminary decree, stay of execution thereof;

(*b*) in the case of a preliminary decree, stay of proceedings for passing a final decree or stay of the making of the final decree.";

(*iii*) in sub-rule (*3*),—

(*a*) the words "of execution", wherever they occur, shall be omitted;

(*b*) for the words, brackets and figure "under sub-rule (*1*)", the words, brackets, figure and letter "under sub-rule (*1A*)" shall be substituted;

(*iv*) in sub-rule (*4*), the words "of execution" shall be omitted;

(*e*) in rule 11, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where an Appellate Court subordinate to the High Court dismisses an appeal under sub-rule (*1*), it shall deliver a judgment, recording in brief, its grounds for doing so and a decree shall be drawn up in accordance with the judgment.";

(*f*) after rule 23, the following rule shall be inserted, namely:—

Remand in other cases.

"23A. Where the Court from whose decree an appeal is preferred, has disposed of the case otherwise than on a preliminary point and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.";

(*g*) in rule 25, after the words "and the reasons therefor", the words "within such time as may be fixed by the Appellate Court or extended by it from time to time" shall be inserted;

(*h*) after rule 26, the following rule shall be inserted, namely:—

Order of remand to mention date of next hearing.

"26A. Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.";

(*i*) in rule 27, in sub-rule (*1*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the party seeking to produce additional evidence satisfies the Appellate Court that such evidence, notwithstanding the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree appealed against was passed, or";

(*j*) rule 30 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.".

Amendment of Order XLIII.

55. In the First Schedule, in Order XLIII, in rule 1,—

(*i*) after clause (*j*), the following clause shall be inserted, namely:—

"(*jj*) an order rejecting an application made under sub-rule (*1*) of rule 105 of Order XXI, provided an order on the original application, that is to say, the application referred to in sub-rule (*1*) of rule 104 of that Order is appealable;";

(*ii*) in clause (*r*), after the word and figure "rule 2", the word, figure and letter ", rule 2A" shall be inserted;

(*iii*) in clause (*u*), after the figures "23", the words, figures and letter "or rule 23A" shall be inserted.

56. In the First Schedule, in Order XLIV

Amendment of Order XLIV.

(*a*) after rule 1, the following rule shall be inserted, namely:—

Grant of time for payment of court fees.

"1A. Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.";

(*b*) in rule 2, in the proviso, after the words "sue or appeal", the words "or to defend the suit or appeal" shall be inserted.

57. In the First Schedule, in Order XLVII, in rule 7, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

Amendment of Order XLVII.

"(*1*) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.".

58. In the First Schedule, in Appendix E,—

Amendment of Appendix E.

(*a*) after Form No. 16, the following Form shall be inserted, namely:—

"No. 16A

AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGMENT-DEBTOR

[O. XXI, r. 41(2)]

In the Court of

A. B..... *Decree-holder*

Vs.

C. D..... *Judgment-debtor.*

I of

oath

state on ———————— as follows:—

solemn affirmation

1. My full name is ————————
(Block capitals)

2. I live at

*3. I am married
single
widower
(widow)
divorced

4. The following persons are dependent upon me.

5. My employment, trade or profession is that of..... carried on by me at

*Words not required to be deleted.

I am a director of the following companies:—

6. My present annual|monthly|weekly income, after paying income-tax, is as follows:—

(*a*) From my employment, trade or profession Rs.

(*b*) From other sources Rs.

7. (*a*) I own the house in which I live; its value is Rs. I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.

(*b*) I pay as rent the annual sum of Rs.

8. I possess the following:— (give particulars)

(*a*) Banking accounts.
(*b*) Stocks and shares.
(*c*) Life and endowment policies.
(*d*) House property.
(*e*) Other property.
(*f*) Other securities.

9. The following debts are owing to me:—

(give particulars).

(*a*) From of

Rs.

(*b*) From of

Rs. (etc.)

Sworn, etc.";

(b) in Form No. 24, after the first paragraph, the following paragraph shall be inserted, namely:—

"It is also ordered that you should attend Court on the day of 19 , to take notice of the date fixed for settling the terms of the proclamation of sale.";

(c) in Form No. 29, in the Schedule of Property, after the existing columns, the following columns shall be added, namely:—

"The value of the property as stated by the decree-holder.	The value of the property as stated by the judgment-debtor."

*Words not required to be deleted.

Amendment of Appendix H.

59. In the Schedule, in Appendix H,—

(a) after Form No. 2, the following Form shall be inserted, namely:—

"No. 2A

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF|DEFENDENT

(O. 16, r. 1)

Name of the party which proposes to call the witness	Name and address of them	Remarks";

(*b*) for Form No. 11, the following Forms shall be substituted, namely:—

"No. 11

NOTICE TO CERTIFICATED, NATURAL OR *de facto* GUARDIAN

(O. 32, r. 3)

(*Title*)

(Certificated|Natural|*de facto* guardian)

To

WHEREAS an application has been presented on the part of the plaintiff* on behalf of the minor defendant* in the above suit for the appointment of a guardian for the suit for the minor defendant , you (insert the name of the guardian appointed or declared by Court, or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.

No. 11A

NOTICE TO MINOR DEFENDANT

(O. 32, r. 3)

(*Title*)

To

Minor Defendant.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of † as

*Strike off what is inapplicable.

†Here insert the name of the guardian.

guardian for the suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the day of 19 , at O'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this day of 19

Judge.".

Repeal and savings.

60. (*1*) Any amendment made or any provision inserted, in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(*2*) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (*1*) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,— 10 of 1897.

(*i*) the provisions of sections 21A of the principal Act as inserted by section 5 of this Act, shall not apply to or affect any suit to set aside a decree or objection as to the place of suing pending immediately before the commencement of the said section 5 and such suit shall be tried as if section 5 has not come into force;

(*ii*) the provisions of section 25 of the principal Act as substituted by section 7 of this Act, shall not apply to or affect any suit, appeal or other proceeding wherein any report has been made under the provisions of section 25 before the commencement of the said section 7 and such suit, appeal or other proceeding shall be dealt with as if the said section 7 has not come into force;

(*iii*) the provisions of section 35A of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any proceedings for revision pending immediately before the commencement of the said section 8 and such proceedings shall be dealt with and disposed of as if section 8 has not come into force;

(*iv*) the omission of section 80 of the principal Act by section 16 of this Act shall not apply to or affect any suit instituted before the commencement of the said section 16 and such suit shall be dealt with as if the said section 80 had not been omitted;

(*v*) the provisions of section 82 of the principal Act as substituted by section 17 of this Act shall not apply to or affect any decree passed against the Union of India or a State or, as the case may be, a public officer, immediately before the commencement of the said section 17 or the execution of any such decree and such decree or execution shall be dealt with as if section 17 has not come into force;

(*vi*) the provisions of section 115 of the principal Act as substituted by section 23 of this Act shall not apply to or affect any proceedings for revision in respect of any interlocutory order pending immediately before the commencement of the said section 23 and every such proceeding shall be disposed of as if the said section 23 has not come into force;

(*vii*) the provisions of rules 31, 32, 58 to 63 and 98 to 103 of Order XXI of the First Schedule as amended or, as the case may be, substituted by this Act, shall not apply to or affect any attachment subsisting immediately before the commencement of section 44 of this Act, or to any suit instituted before such commencement under rule 63 aforesaid to establish right to attached property or under rule 103 aforesaid to establish possession and every such attachment or suit shall be continued as if the said section 44 has not come into force.

B. N. BANERJEE,
Secretary.

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